

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MR. and MRS. QUINN R. OWEN,

Plaintiffs,

vs.

JACK BURCHARD et. al.,

Defendants.

No. CV-05-045-JLQ

ORDER DISMISSING
FIRST AMENDED COMPLAINT

BEFORE THE COURT is Plaintiffs' First Amended Complaint (Ct. Rec. 14) and various supporting documents. Plaintiffs are proceeding *pro se*. A notice of appearance has been entered by Okanogan County Deputy Prosecutor Heidi Appel on behalf of Okanogan County officials who had been served by Plaintiffs but were not named as Defendants in the original Complaint.

DISCUSSION

This court previously issued an Order re: sufficiency of the complaint (Ct. Rec. 13) in which it advised Plaintiffs of the numerous technical and legal deficiencies with their 'complaint' - - which at that time was entitled a "petition for certified questions" and stated no cause of action. The court's order gave Plaintiffs the opportunity to amend or voluntarily dismiss their complaint. If Plaintiffs chose to file an amended complaint, they were also directed to file a separate memorandum addressing why the complaint should not be dismissed under the *Younger v. Harris*, 401 U.S. 37 (1971) doctrine. Plaintiffs have filed such a memorandum. (Ct. Rec. 15).

I. Factual Background

Plaintiffs' First Amended Complaint, though an improvement on the original Complaint, still fails to set forth a "short and plain statement of the claim showing that the pleader is entitled to relief" as required by Fed. R. Civ. P. 8(a). The First Amended Complaint does not contain a coherent factual background or recitation of recognizable

1 causes of action. The facts, as presented herein, are what the court can discern from
2 Plaintiffs' filings to date. Mathew Smith, an acquaintance of Plaintiff Quinn Owen, was
3 cited and arrested for a reckless driving incident that occurred on September 30, 2004.
4 (Ct. Rec. 19, Ex. 16). On November 19, 2004, Mathew Smith and Plaintiff Quinn Owen
5 entered into a contract in which Owen would represent Smith on the reckless driving
6 charge. (Ct. Rec. 14, Ex. 23). The contract provided that Owen would be compensated
7 in the amount of \$150.00 per hour. (Id.). Owen does not contend he is a licensed
8 attorney. Owen then apparently attempted to file documents on behalf of Smith in
9 Okanogan County District Court. (Ct. Rec. 19, p. 13). The court administrator referred
10 the matter to the Okanogan County Prosecutor's office. (Id.). In early December, 2004,
11 the Okanogan Prosecutor filed a criminal information and the court issued a criminal
12 summons. (Ct. Rec. 19, Ex. 17-Ex. 25). Owen was charged by information with 8 counts
13 of unauthorized practice of law.

14 Owen filed his Petition for Certified Questions (Ct. Rec. 1) in this court on
15 February 14, 2005, while the state criminal prosecution against him was still ongoing.
16 Plaintiffs were informed in this court's previous order that "federal courts are to abstain
17 from interference with pending state criminal prosecutions". (Ct. Rec. 13). It is the rule
18 of *Younger v. Harris*, that absent extraordinary circumstances, federal courts may not
19 enjoin or otherwise interfere with pending state criminal proceedings. So-called *Younger*
20 abstention requires outright dismissal of the federal suit. This court may not merely stay
21 the federal action and retain jurisdiction in order to render a decision on the merits after
22 the state proceedings have ended. See *Beltran v. California*, 871 F.3d 777, 782 (9th Cir.
23 1988).

24 There is a three-pronged test for determining if *Younger* abstention is required. *Id.*
25 at 781 (citing *Middlesex County Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423
26 (1982)). Abstention is required if the state proceedings (1) are ongoing, (2) implicate
27 important state interests, and (3) provide the plaintiff an adequate opportunity to litigate
28 federal claims. *Id.*; *Bendel v. State of California*, __F.3d__ (9th Cir. April 11, 2005). As

1 to the first prong, it is clear from the record in this case that the state criminal proceeding
2 was initiated prior to this federal suit, and it is clear from pleadings (see for example Ct.
3 Rec. 10 & 12) filed by Plaintiffs that the state prosecution remained ongoing after the
4 filing of the instant suit. See *Beltran* at 782 ("In other words, *Younger* abstention requires
5 that the federal courts abstain when state court proceedings were ongoing **at the time the**
6 **federal action was filed.**)(emphasis added). As to the second prong, the state of
7 Washington clearly has an important interest in the enforcement of its criminal laws. The
8 Ninth Circuit has recognized an important state interest in regulating and disciplining
9 attorneys. See *Bendel* at __ (recognizing that "States traditionally have exercised
10 extensive control over the professional conduct of attorneys as each state has an
11 extremely important interest in maintaining and assuring the professional conduct of the
12 attorneys it licenses."). Washington State's interest in regulating those who practice law
13 without a license is an equally, if not more, important interest. Lastly, under the third
14 prong, Plaintiffs have made no showing that the state courts are an insufficient forum in
15 which to hear any federal claims that Plaintiffs may have. There is no reason to believe
16 that Plaintiffs would not have an adequate opportunity to litigate their federal claims, if
17 any, during the state court proceeding.

18 It is clear from the First Amended Complaint that Plaintiffs complain of the
19 pending state criminal prosecution. It is unclear what specifically is objectionable about
20 the criminal prosecution and what specific relief is sought. Plaintiff makes the
21 conclusory allegation that the arrest was made in "bad faith" and that he was
22 "overcharged". (First Amend. Comp. p. 3). The relief sought by Plaintiffs is largely
23 indecipherable. For example, Plaintiffs seek a court decree that the equitable rights of
24 birth and life shall never be ruled over or destroyed. Additionally, "to ensure
25 incorruptible relief" Plaintiffs ask this court to direct the Washington Supreme Court to
26 promulgate court rules. More concretely, Plaintiffs ask for attorney fees for defending
27 the state criminal prosecution and for bringing this suit. This court is not authorized, nor
28 would it be inclined if authorized, to award attorney fees related to a state court matter

1 and this court certainly would not award attorney fees to Plaintiffs for bringing this
2 meritless action. See also *Bendel v. State of California*, ___F.3d___ (9th Cir. April 11,
3 2005)(where a complainant seeks declaratory and injunctive relief and/or attorney fees, as
4 opposed to damages, the traditional rules of *Younger* abstention apply: "The federal
5 courts must abstain permanently because [complainant] is asking only that the federal
6 courts stop the state proceedings.").

7 This federal court has no role to play in interfering with an ongoing state criminal
8 prosecution. If Owen is acquitted, and has an otherwise valid claim for relief (mere
9 acquittal would not serve as the basis of a claim), he may bring an action under 42 U.S.C.
10 § 1983. Alternatively, if Owen is convicted, he may, after completely exhausting all
11 challenged issues through direct appeals in state court, including to the Supreme Court of
12 the state, bring a habeas corpus action pursuant to 28 U.S.C. § 2254 to review any federal
13 constitutional challenges to his conviction.

14 Accordingly,

15 **IT IS HEREBY ORDERED:**

16 1. This court is required by the abstention doctrine set forth in *Younger v. Harris*, 401
17 U.S. 37, 49-53 (1971) and under the dictates of *Beltran v. California*, 871 F.2d 777 (9th Cir.
18 1988), to dismiss this action in which Plaintiff seeks to have the court interfere with an
19 ongoing state criminal prosecution.

20 2. Plaintiffs' First Amended Complaint (Ct. Rec. 14) and all claims therein are
21 **DISMISSED WITHOUT PREJUDICE.**

22 3. The Clerk of the court shall enter a Judgment of dismissal without prejudice and
23 close the file.

24 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and furnish
25 copies to Plaintiffs and counsel.

26 DATED this 19th day of April, 2005.

27 s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
28 SENIOR UNITED STATES DISTRICT JUDGE